

Responses to comments raised by the Bills Committee
during the clause-by-clause examination
Clause 1 to Clause 22

	Comments of the Bills Committee	Responses
(1)	<p><u>Clause 3 (section 2)</u> – to consider the need to include “temporary deputy registrar” and “temporary assistant registrar” in the definition of “Registrar”</p>	<p>We have considered Members’ comments and come to the view that provisions should be added to provide for the appointment of “temporary deputy registrar and temporary assistant registrar” so that the arrangement for temporary appointment in the District Court will be in line with that at other levels of courts. We shall introduce committee stage amendments (CSAs) to this effect along the line of section 37A, 37B and 40A of the High Court Ordinance (the relevant extract is at the Annex). With these CSAs, we consider it not necessary to include “temporary deputy registrar” and “temporary assistant registrar” in the definition of “Registrar”. This is in line with the existing provisions of the High Court Ordinance.</p>
(2)	<p><u>Clause 6(3) (section 6(3))</u> – to explain the reason for the proposed amendment as a judge has the discretion to hear cases in court or in chamber under existing subsection (3)</p>	<p>The new sub-section (3) is modelled on section 32A of the High Court Ordinance. There is no material difference between the current sub-section and the new sub-section, except that the emphasis on the disposal of business has been shifted to open court. Nevertheless, the judge’s discretion to hear a case in court or in chambers is preserved under the new District Court Rules which is modelled on Order 32, R. 19 of the Rules of the High Court. Under the proposed new rule, “the judge may, by any judgment or order made in Court in any proceedings, direct that such matters in the proceedings as he may specify shall be disposed of in chambers”.</p>

(3)	<u>Clause 14 (section 26)</u> – to consider the need to retain the section as conduct described in the section should be covered by the Prevention of Bribery Ordinance and referred to ICAC for investigation	We are seeking legal advice on the matter and shall revert to the Bills Committee as soon as possible.
(4)	<u>Clauses 17-19 (sections 29-31)</u> – to explain the need for and the effect of the proposed amendments	We are seeking legal advice on the matter and shall revert to the Bills Committee as soon as possible.
(5)	<u>Clause 20 (section 32(1),(2),(4))</u> – to review the drafting of proposed section 32(1), (2) and (4) in the light of some Members’ view that it seems unnecessary to have separate sub-section (1), (2) and (4) dealing with different types of actions, when the proposed jurisdictional limits are exactly the same.	<p>The reason for having two subsections for (1) contract, quasi-contract or tort, not being an action for personal injuries; and (2) personal injuries is that our original intention is to introduce different financial limits for personal injuries cases and other general monetary claims. We envisage no difficulty in combining the two sub-sections for the current exercise, given that the proposed limits are <u>now</u> the same. Members may however wish to note that if the two sub-sections are combined, an amending Bill will be required in future if separate jurisdictional limits are to be set for personal injuries and other general monetary claims. Separation of the two sub-sections would enable ease of amendment by resolution of the Legislative Council under section 73A of the Ordinance. As it is our intention to review the financial limits of the District Court on a regular basis in future, it appears that keeping the two sub-sections separate would retain more flexibility.</p> <p>As regards subsection (4), we consider that a standalone sub-section for proceedings by way of interpleader has the benefit of greater clarity. Interpleader proceedings may or may not arise from actions founded on contract, quasi-contract or tort in subsection (1). The combination of</p>

		sub-section (1) and (4) may narrow the scope of the proceedings by way of interpleader.
(6)	<u>Clause 20 (section 32(3))</u> – to explain the reasons for deleting words “particulars of his claim or demand” in proposed section 32(3); and	The way new sub-section (3) is drafted (ie. “the amount of the plaintiff’s claims means the amount the plaintiff claims after taking into account any set-offthat the plaintiff admits”) render the wording “in the particulars of his claim” unnecessary since “the amount the plaintiff claims” refers to the claim in the plaintiff’s statement of claim. The reference to “demand” is no longer applicable given the more formal procedural framework of the District Court (ie. all actions will begin with formal pleadings).
(7)	<u>Clause 22 (sections 35, 36, 37(4))</u> – to explain why jurisdiction limit is proposed to be calculated with reference to rateable value only and how is a case determined in the absence of rateable value. The existing section allows calculation with reference to annual rent or annual value of the land	<p>The proposed removal of reference to “annual rent” and “annual value” stemmed from a recommendation in the Kempster Report on the understanding that the “annual rent” and “annual value” of a piece of land should roughly be the same as its rateable value. In addition, even if a piece of land is exempted from assessment to rates under the Rating Ordinance, it does not necessarily mean the land has no rateable value. If the rateable value of a piece of exempted land as determined in accordance with the Rating Ordinance does not exceed \$240,000, the District Court should have jurisdiction over cases concerning its title or recovery under the proposed sections 35 and 36.</p> <p>Having further considered the matter in the light of Members’ views, we agree that while the determination of rateable value for land exempted under the Rating Ordinance is possible in principle, there could be practical difficulties and litigants might dispute the District Court’s jurisdiction in the absence of a “rateable value” under the proposed amendments. Litigants might have to instruct their own surveyors for</p>

		<p>an assessment of the “rateable value”, which could mean additional costs and possible delay, and further costs if the parties do not agree to the assessment. We therefore agree that the references to “annual rent” and “annual value” should be retained in sections 35, 36 and 37(4) of the Ordinance. We shall move a CSA to this effect.</p>
(8)	<p><u>Clause 22 (sections 35 & 36)</u> – to provide the percentage of properties having a rateable value of \$240,000 and the proportion of land-related cases involving properties with a capital value of about \$6 million handled by the Court of First Instance</p>	<p>About 92% of properties in the current valuation list have an annual rateable value up to \$240,000. As regards the proportion of land-related cases involving properties with a capital value of about \$6 million handled by the Court of First Instance, we do not keep any statistics as there is no requirement for the value of the properties concerned to be specified when they are filed with the High Court Registry.</p> <p>It should be pointed out that the proportion of properties having regard to their rateable values should not equate to the proportion of land-related cases before the court involving the equivalent amount of rateable values. This is particularly so for cases involving disputes in titles under section 36. According to the experience of the court, there are not many cases involving properties of a value less than say \$5 million which would proceed to trial under section 36, bearing in mind the likely litigation costs vis-à-vis the property value.</p>
(9)	<p><u>Clause 22 (section 37(2)(g)(ii) & (iv))</u> – to consider some members’ view that subsection (2)(g)(ii) appears to be redundant and to provide examples of cases which will fall under (ii) and (iv) respectively</p>	<p>Under sub-section 37(2)(ii), for a claim partly involving or relating to land, but the part not so involved is <u>over</u> \$600,000, the District Court’s jurisdictional limit is \$600,000.</p> <p>Under sub-section 37(2)(iv), for a claim partly involving or relating to land, but the part not so involved is <u>under</u> \$600,000, the District Court’s jurisdictional limit is \$3 million.</p>

		<p>As the jurisdictional limits set out in section 32, 33, 35 and 36 are not applicable to actions brought under section 37, deletion of sub-section 37(2)(ii) would render the District Court's limit under equity jurisdiction unclear if a claim partly involving or relating to land, but the part not so involved is above \$600,000, say, \$700,000.</p>
(10)	<p><u>Clause 22 (section 39)</u> – to explain the operation of proposed section 39 and how to deal with the situation where another party has appeared after the jurisdiction agreement has been signed by the relevant parties to the action or proceeding.</p>	<p>Section 39 enables the District Court to accept unlimited jurisdiction for specified actions or proceedings by agreement among all parties to the actions or proceedings. Nevertheless, the court has the final say on where an action or proceeding should be heard. Under new section 43, the District Court may on its own motion (whether or not the party has entered into a jurisdiction agreement under section 39), order the transfer to the Court of First Instance of any action/ proceeding within its jurisdiction. We are reconsidering the desirability of section 39 in the light of Members' comments and would revert to the Bills Committee.</p>

Annex**BLIS ON****INTERNET**

Section of Enactment

Chapter:	4	Title:	HIGH COURT ORDINANCE	Gazette	25 of 1998
				Number:	s. 2
Section:	37A	Heading:	Appointment of temporary deputy registrars	Version	01/07/1997
				Date:	

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) The Chief Justice may appoint a person to be a temporary deputy registrar if -
 - (a) the office of any deputy registrar becomes vacant for any reason; or
 - (b) he considers that the interest of the administration of justice requires that a temporary deputy registrar should be appointed.
- (2) Without prejudice to the generality of the power conferred on him by subsection (1), the Chief Justice may appoint a temporary deputy registrar for a specified period only.
- (3) The Chief Justice may terminate the appointment of a temporary deputy registrar at any time.
- (4) A temporary deputy registrar may be called Master.
- (5) In this section and section 40A, “temporary deputy registrar”(暫委副司法常務官) means a person appointed under subsection (1) to be a temporary deputy registrar.

(Added 1 of 1997 s. 5)

Section of Enactment

Chapter:	4	Title:	HIGH COURT ORDINANCE	Gazette	25 of 1998
				Number:	s. 2
Section:	37B	Heading:	Appointment of temporary assistant registrars	Version	01/07/1997
				Date:	

Remarks:

Amendments retroactively made - sec 25 of 1998 s. 2

- (1) The Chief Justice may appoint a person to be a temporary assistant registrar if.
 - (a) the office of any assistant registrar becomes vacant for any reason; or
 - (b) he considers that the interest of the administration of justice requires that a temporary assistant registrar should be appointed.
- (2) Without prejudice to the generality of the power conferred on him by subsection (1), the Chief Justice may appointed a temporary assistant registrar for a specified period only.
- (3) The Chief Justice may terminate the appointment of a temporary assistant registrar at any time.
- (4) A temporary assistant registrar may be called Master.
- (5) In this section and section 40A, “temporary assistant registrar” (暫委助理司法常務官) means a person appointed under subsection (1) to be a temporary assistant registrar.

(Added 1 of 1997 s. 5)

Section of Enactment

Chapter:	4	Title:	HIGH COURT ORDINANCE	Gazette	25 of 1998
				Number:	s. 2
Section:	40A	Heading:	Powers of temporary deputy registrars, etc. in case which is part-heard on termination of appointment	Version	01/07/1997
				Date:	

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) In the hearing of any proceedings before a temporary deputy registrar is adjourned or he reserves judgment in any proceedings, the temporary deputy registrar shall have power to resume the hearing and determine the proceedings or deliver judgment, notwithstanding that his appointment as a temporary deputy registrar has expired or has been terminated.

(2) Subsection (1) shall apply to a temporary assistant registrar as it applies to a temporary deputy registrar.

(Added 1 of 1997 s. 6)